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IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

INGERSOLL-RAND COMPANY,
Petitioner,

v.

PERRY MCCLENDON,
Respondent.

On Writ of Certiorari to the Supreme Court of Texas

BRIEF AMICI CURIAE OF THE EQUAL EMPLOYMENT ADVISORY COUNCIL AND TEXAS EMPLOYMENT LAW COUNCIL IN SUPPORT OF PETITIONER

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BRIEF AMICI CURIAE OF THE EQUAL EMPLOYMENT ADVISORY COUNCIL AND TEXAS EMPLOYMENT LAW COUNCIL IN SUPPORT OF PETITIONER

The Equal Employment Advisory Council ("EEAC") and Texas Employment Law Council ("TELC") respectfully submit this brief amici curiae in support of Petitioner. The written consents of all parties have been filed with the Clerk of this Court.

INTEREST OF THE AMICI CURIAE

EEAC is a nationwide association of employers and trade associations organized in 1976 to promote sound approaches to the elimination of discriminatory employment practices. Its membership comprises a broad segment of the business community.

The Council's governing body is a Board of Directors composed of experts in the field of equal employment opportunity. Their combined experience gives the Council an unmatched depth of knowledge of the practical as well as the legal aspects of equal employment policies and requirements. The members of EEAC are firmly committed to the principles of nondiscrimination and equal employment opportunity.

All of EEAC's members, and the constituents of its trade association members, are employers subject to various employment and labor laws, including the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 *et seq.* As employers, virtually all of EEAC's members and member constituencies maintain employee benefit plans for their employees over and above normal wages and salaries. Many of these plans are products of collective bargaining with employee representatives.

EEAC members conduct business in virtually all states, and many members themselves have operations in a multitude of states. As potential defendants to state tort suits charging discriminatory interference with rights under employee benefit plans, EEAC's members are interested in the extent to which ERISA pre-empts such claims.

EEAC has participated as amicus curiae in several cases involving ERISA pre-emption of state law, including several in this Court.[1] In addition,

[1] *Ingersoll-Rand Company v. McClendon* (No. 89-1298), *cert. granted*, 110 S.Ct. 1804 (April 16, 1990); *General Motors Corporation v. Wells* (No. 89-1067), *cert. denied*, 50 U.S.L.W. 3694 (U.S. April 30, 1990); *Shaw v. Delta Airlines*, 463 U.S. 85 (1983); *Nolan v. Otis Elevator Co.*, 505 A.2d 580 (N.J. 1986); *Brooklyn Union Gas Co. and American Airlines v. N.Y. Human Rights Appeal Board*, 359 N.E.2d 393 (N.Y. 1976).

EEAC has filed amicus curiae briefs with this Court in a number of other cases involving pre-emption of state suits by federal law.[2]

TELC is a voluntary, non-profit association organized to promote the common interest of employers and the general public in well-reasoned laws and regulations affecting all aspects of employment in the private sector. TELC is incorporated under Texas law and is not affiliated with any other business association, except that its membership consists of employers doing business in Texas. Organized in early 1984, TELC has approximately 50 members, representing a diverse group of significant industries throughout Texas. These include, among others, refining and petrochemical, banking, insurance, retail, high tech, forest products, and health care. TELC's member companies range in size from less than 200 employees to more than 50,000 employees. Its governing body is a Board of Directors composed of experts in the fields of human resources management and employment law. This combined experience gives the Council a depth of understanding of the practical and legal considerations relevant to the development of employment-related law. TELC briefed this case before the Supreme Court of Texas. Pet. App. 1a.[3]

Thus, the issues presented for review in this case are extremely important to the constituencies that

[2] *General Motors Corporation v. Wells, supra* n.1 (NLRA and § 301 LMRA pre-emption), *Caterpillar, Inc. v. Williams*, 479 U.S. 960 (1987) (§ 301 pre-emption); *Lingle v. Norge Division of Magic Chef, Inc.*, 108 S. Ct. 1877 (1988) (§ 301 pre-emption).

[3] Citations to the Petitioner's Appendix are designated as Pet. App. ——.

EEAC and TELC represent. The court below held that a tort action under state law charging discriminatory discharge with the intent to interfere with pension rights, which is specifically prohibited by § 510 of ERISA, was not precluded by ERISA's broad pre-emption provision because the plaintiff sought lost wages, damages for mental anguish, and punitive damages, not lost pension benefits.

This conclusion directly contradicts the clear language of ERISA as well as consistent interpretations by this Court supported by clear legislative history establishing Congressional intent to pre-empt state law relating to employee benefit plans. Moreover, the decision of the Supreme Court of Texas undermines the uniformity of pension law that Congress sought to establish in enacting ERISA. Accordingly, the decision below significantly burdens the administration of employee benefit plans covered by ERISA, and subjects employers to varying provisions of state law, with the attendant inconsistencies in rules and policies, and exposes employers to tort damages not available under ERISA.

EEAC and TELC's interests in this case lie in their desire that the Congressional purpose in enacting ERISA, to "establish pension plan regulation as exclusively a federal concern," *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (1981), not be undermined by an unduly narrow interpretation of the ERISA pre-emption provision. Such an interpretation would allow persons in states that permit widely varied employment-related individual tort causes of action to resort to the state courts and state law to resolve disputes more properly addressed through application of uniform federal law. The decision of the Supreme Court of Texas below, which adopts a severely restrictive interpretation of ERISA

pre-emption and allows a state tort suit on a cause of action specifically provided by ERISA, creates substantial concern among the employer community regarding the scope of ERISA pre-emption in these cases.

Because of their significant experience, EEAC and TELC are uniquely situated to brief the Court on the relevant concerns of the business community and the significance of this case to employers generally, as significance of this case to employers generally—matters which have not already been brought to the Court's attention by the parties.

STATEMENT OF THE CASE

Respondent Perry McClendon, who had been employed by Petitioner Ingersoll-Rand since August 1972, was discharged in November 1982 as part of a reduction-in-force. Pet. App. 1a-2a. At the time, McClendon believed that he needed four more months of service to qualify for a pension benefit, *id.* at 2a, but in fact his pension was vested. *Id.* at n.2.

McClendon brought a state tort suit against Ingersoll-Rand, claiming *inter alia* that Ingersoll-Rand had discharged him in order to avoid making contributions to his pension fund. Pet. App. 1a.[4] The trial court granted summary judgment for the employer, and the Texas Court of Appeals affirmed. *Id.* The Court of Appeals recognized that McClendon "incorrectly concluded that being discharged before ten years of service would prevent him from collecting certain benefits" and that "[h]e was in fact never

[4] McClendon also alleged causes of action based on an alleged employment contract, an implied covenant of good faith and fair dealing, and intentional infliction of emotional distress. Pet. App. 17a.

denied those benefits." Pet. App. 24a. Thus, the Court of Appeals held, "Ingersoll-Rand did nothing more than react to an economic downturn by reducing its sales force. Such conduct is in no way actionable." *Id.*

The Supreme Court of Texas reversed. Finding a state public policy interest in protecting employee pension rights, the court created an exception to the employment-at-will doctrine in Texas, allowing a cause of action where an employee proves that he was discharged to avoid payment of pension benefits. Pet. App. 5a.

The court's public policy finding was based in part on the existence of § 510 of the Employee Retirement Income Security Act, 29 U.S.C. § 1140, which prohibits discrimination against employees for the purpose of interference with their pension rights. Pet. App. 5a. While recognizing that such cases have been held to be pre-empted by ERISA, the court asserted that this case was distinguishable because McClendon sought tort damages, not pension benefits. *Id.* at n.3.

Justice Cook filed a strong dissent in which Chief Justice Phillips and Justice Hecht joined. Pet. App. 6a-13a. Agreeing with the majority that "ERISA demonstrates the great significance attached to income security for retirement," Justice Cook went on to recognize that § 510 is *so* significant that it "confers upon employees a federal version of the cause of action created by this court, confines litigation of the federal cause of action to the federal courts, and pre-empts the state cause of action." Pet. App. 6a.

Justice Gonzalez, who also dissented, joined Justice Cook's conclusion that ERISA pre-empts McClendon's cause of action. *Id.* at 13a. He also observed that the majority's reliance on two decisions of the U.S. District Court for the Eastern District of New York was

"misplaced," since both the Northern District of New York and a New York court of appeals had refused to follow them. *Id.* at 15a.

SUMMARY OF ARGUMENT

The Employee Retirement Income Security Act, 29 U.S.C. § 1001 *et seq.*, establishes federal standards and requirements relating to the administration of employee benefit plans. In an effort to strengthen minimum vesting standards, Congress added § 510, which prohibits discrimination against employees for the purpose of interfering with the attainment of rights under an employee benefit plan. Section 510 provides a civil cause of action to an employee who is the victim of such discrimination.

To emphasize that pension plan regulation is exclusively federal in nature, and to eliminate inconsistent state and local restrictions, Congress included a broad pre-emption provision. Pursuant to § 514, ERISA's provisions pre-empt "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan. . . ." 29 U.S.C. § 1144(a). Thus, any State law having a "connection with or reference to" an employee benefit plan, including common law developed through court decision, is pre-empted by ERISA. *Pilot Life Insurance Company v. Dedeaux*, 481 U.S. 41, 46 (1987).

Since § 510 provides a cause of action protecting employees from discharge intended to interfere with attainment of rights under an employee benefit plan, and because ERISA broadly pre-empts state common law that relates to such plans, numerous federal and state courts have held that state law claims which mirror § 510 are pre-empted by ERISA. In contrast to this great wealth of authority, the court

below concluded that such an action could be maintained in state court under state law.

The court below reasoned that ERISA pre-emption was inapplicable because the plaintiff sought tort damages rather than pension benefits. Since Congress specifically chose to supersede state causes of action as well as any state remedies that might be available, with an exclusively federal remedy, a claim for state tort damages cannot overcome ERISA's complete pre-emption of state laws that "relate to" employee benefit plans.

The decision of the Supreme Court of Texas seriously erodes the uniform federal system of employee benefit regulation that Congress sought to establish in enacting ERISA. Moreover, the holding below seriously burdens the numerous employers who voluntarily maintain employee benefit plans, many of which operate in more than one state. The Texas Supreme Court's decision would allow the application of both federal and state requirements to employee benefit plans, causing substantial confusion.

In addition, exposure to diverse state and local laws and regulations will hinder the maintenance of uniform benefit plans by multistate employers, requiring them to choose between administering costly individual plans in each state and eliminating benefits that conflict with the requirements of a particular jurisdiction. These concerns formed the basis for ERISA's intentionally broad pre-emption provision, and have influenced this Court in numerous decisions recognizing the exclusively federal nature of claims related to benefit plans.

Since the decision below contravenes the clear statutory language of ERISA as well as the sound policy which underlies that language, it must be reversed.

ARGUMENT

I. ERISA PRE-EMPTS STATE TORT SUITS FOR DISCHARGE FOR INTERFERENCE WITH ATTAINMENT OF EMPLOYEE BENEFITS

A. Because ERISA Provides a Cause of Action for Interference with Attainment of Employee Benefits, It Pre-empts State Tort Suits for the Same Wrong

1. *ERISA Provides a Cause of Action for Discharge for Interference with Attainment of Employee Benefits*

The Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 *et seq.*, is a "comprehensive statute designed to promote the interests of employees and their beneficiaries in employee benefit plans." *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 84, 90 (1983). "The statute imposes participation, funding, and vesting requirements on pension plans. It also sets various uniform standards, including rules concerning reporting, disclosure, and fiduciary responsibility, for both pension and welfare plans." *Id.* at 90-91 (citations omitted).

Recognizing that minimum vesting standards may be insufficient to protect employee benefits because employees could be discharged before their benefits were vested,[5] Congress provided specific protection

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[5] During hearings, Senator Hartke stated, "No vesting formula will produce real employee protection so long as employers are free to fire employees to defeat pension eligibility. Unfortunately, the Senate Labor Committee studies document many such occurrences. No statutory protection exists to prevent such action." Subcomm. on Labor of the Senate Comm. on Labor and Public Welfare, 94th Cong., 2d Sess., Legislative History of the Employee Retirement Income Security Act of 1974, P.L. 93-406, 1774 (Comm. Print 1976).

against this possibility. Section 510 of ERISA provides in pertinent part:

> It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary . . . for the purpose of interfering with the attainment of any right to which such participant may become entitled under [an employee benefit] plan . . . . The provisions of Section 1132 of this title [relating to civil enforcement] shall be applicable in the enforcement of this section.

29 U.S.C. § 1140.[6] Thus, § 510 prohibits an employer from discharging an employee in order to avoid payment of benefits, and creates a civil cause of action in favor of such employee. *See, e.g., Cox v. Keystone Carbon Co.*, 861 F.2d 390, 391-2 (3d Cir. 1988) (§ 510 prevents employers from discharging employees to keep them from obtaining plan benefits, and authorizes a civil action).[7]

[6] Similarly, § 511 prohibits coercive interference with the exercise of rights under an ERISA plan. 29 U.S.C. § 1141. Describing § 610, which became § 510, and § 611, which became § 511, the Senate Report states, "These provisions were added by the Committee in the face of evidence that in some plans a worker's pension rights or the expectations of those rights were interfered with by the use of economic sanctions or violent reprisals. Although the instances of these occurrences are relatively small in number, the Committee has concluded that safeguards are required to preclude this type of abuse from being carried out and in order to completely secure the rights and expectations brought into being by this landmark reform legislation." S. Rep. No. 93-127, 93d Cong., 2d Sess., *reprinted* in 1974 U.S. Code Cong. & Admin. News 4838, 4872.

[7] *See also Dister v. The Continental Group, Inc.*, 859 F.2d 1108 (2d Cir. 1988); *Gavalik v. Continental Can Company*, 812 F.2d 834 (3d Cir.), *cert. denied*, 484 U.S. 979 (1987) (burden of proof in a civil action under § 510).

2. *ERISA's Language and This Court's Decisions Mandate Pre-emption of State Tort Suits "Related To" Employee Benefit Plans, Including Those Which Parallel ERISA § 510*

ERISA contains broad language pre-empting state action relating to employee benefit plans:

> Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter *shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan* described in section 1003(a) of this title and not exempt under section 1003(b) of this title.

Section 514, 29 U.S.C. § 1144(a) (emphasis added).[8] ERISA's pre-emption provision is "virtually unique," *Franchise Tax Board of the State of California v. Construction Laborers Vacation Trust For Southern California*, 463 U.S. 1, 24 n.26 (1983), and of "unparalleled breadth." *Holland v. Burlington Industries, Inc.*, 772 F.2d 1140, 1147 (4th Cir. 1985), *aff'd sub nom. Brooks v. Burlington Industries, Inc.*, 477 U.S. 901 (1986). As this Court has observed, Section 514 is "deliberately expansive, and designed to 'establish pension plan regulation as exclusively a federal concern.'" *Pilot Life Insurance Company v.*

[8] Subsection (b) generally excepts from ERISA pre-emption (1) causes of action occurring before January 1, 1975, (2) state laws regulating insurance, banking and securities, (3) use of the services or facilities of a State, (4) state criminal laws, (5) the Hawaii Prepaid Health Care Act, (6) certain state laws regulating some multiple employer welfare arrangements and (7) qualified domestic relations orders, none of which are relevant here. 29 U.S.C. § 1003(b) exempts from ERISA coverage governmental and church plans as well as plans maintained solely to comply with workmen's compensation or unemployment compensation laws, and likewise is not relevant here.

Dedeaux, 481 U.S. 41, 46 (1987), quoting *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (1981).

This Court's decision in *Pilot Life* contains a thorough discussion of the legislative history supporting broad interpretation of § 514. 481 U.S. at 46. Congress rejected a pre-emption clause "applicable only to state laws relating to the specific subjects covered by ERISA . . . in favor of" the present broad language. *Id.*, quoting *Shaw v. Delta Air Lines, Inc.*, 463 U.S. at 98. Moreover:

> The House and Senate sponsors emphasized both the breadth and importance of the pre-emption provisions. Representative Dent described the "reservation to Federal authority the sole power to regulate the field of employee benefit plans" as ERISA's "crowning achievement." 120 Cong. Rec. 29197 (1974). Senator Williams said:
>
> > "It should be stressed that with the narrow exceptions specified in the bill, the substantive and enforcement provisions of the conference substitute are intended to preempt the field for Federal regulations, thus eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans. This principle is intended to apply in its broadest sense to all actions of State or local governments, or any instrumentality thereof, which have the force or effect of law." *Id.* at 29933.
>
> See also *Shaw v. Delta Air Lines, Inc.*, *supra*, at 99-100, n.20, (describing remarks of Senator Javits).

481 U.S. at 46. Thus, this Court has recognized that Congress intended the ERISA pre-emption provision to be extremely broad.

A state tort action for wrongful discharge for the purpose of interfering with attainment of pension benefits "relates to" a benefit plan, as required for ERISA pre-emption. In *Pilot Life*, this Court reaffirmed prior decisions in which "[t]he phrase 'relate to' was given its broad common-sense meaning, such that a state law 'relate[s] to' a benefit plan 'in the normal sense of the phrase, if it has a connection with or reference to such a plan.'" *Pilot Life*, 481 U.S. at 47, quoting *Metropolitan Life Insurance Co. v. Massachusetts*, 471 U.S. 724, 739 (1985), quoting *Shaw v. Delta Air Lines*, 463 U.S. at 97.

ERISA pre-emption is not limited to state laws directly regulating employee benefit plans. On the contrary, "ERISA makes clear that even *indirect* state action bearing on private pensions may encroach upon the area of exclusive federal concern." *Alessi*, 451 U.S. at 525 (emphasis added). State common law creating a cause of action parallel to one provided by § 510 of ERISA has precisely this effect, regardless of whether the remedies are co-existent with those available under § 510 or are in the nature of tort damages.[9]

Indeed, a claim for wrongful discharge with the intent to interfere with the attainment of benefits has more than a mere "connection with or reference to" a benefit plan; it relies on the benefit plan for its very

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[9] State judicial decisions as well as legislative pronouncements are pre-empted, since § 514 of ERISA defines "state law" to "include all laws, *decisions*, rules, regulations, or other State action having the effect of law, of any State." 29 U.S.C. § 1144(c)(1) (emphasis added). *See also Pilot Life Insurance Company v. Dedeaux*, 481 U.S. at 48 n.1 (state decisional law included within definition of "state law" under § 514).

existence. The Supreme Court of Texas described the law it created as follows: "This exception [to the employment-at will doctrine] allows recovery when the plaintiff proves that the principal reason for his termination was the employer's desire to avoid contributing to or paying *benefits under the employee's pension fund.*" Pet. App. 5a (emphasis added). Thus, no plaintiff can recover under this new Texas tort without demonstrating the existence of and interference with rights to benefits under a benefit plan. Accordingly, the Texas cause of action "relates to" Ingersoll-Rand's benefit plan. *Fitzgerald v. Codex Corporation*, 882 F.2d 586, 588 (1st Cir. 1989) (claim for wrongful discharge to interfere with benefits "relates to" ERISA-covered benefit plan).

When the succinct formula used by this Court in *Metropolitan Life Insurance Company v. Taylor*, 481 U.S. 58 (1987), is applied, it is clear that the state law action under scrutiny here is pre-empted by ERISA. Like *Pilot Life*, *Taylor*, which was decided on the same day, involved common law claims for improper processing of a benefit claim.[10] This Court quickly established that such claims were pre-empted, as follows:

> Under our decision in *Pilot Life Ins. Co. v. Dedeaux*, . . . Taylor's common law contract and tort claims are pre-empted by ERISA. This lawsuit "relate[s] to [an] employee benefit plan." . . . It is based upon common law of general application that is not a law regulating insurance. . . . Accordingly, the suit is pre-empted by § 514(a) and is not saved by § 514(b)(2)(A).

[10] *Taylor* held that "complaints filed in state courts purporting to plead . . . state common law causes of action [for improper processing of benefits] are removable to federal court" because they are "displaced by ERISA's civil enforcement provision." 481 U.S. at 60.

481 U.S. at 62 (citations omitted). Like the common law claims in *Pilot Life* and *Taylor*, the state law cause of action created by the court below relates to an employee benefit plan, is based on common law, and falls directly under an ERISA provision providing an exclusively federal cause of action. Thus, McClendon's state law claim, which mirrors a claim under § 510 of ERISA, is pre-empted by § 514. *Sorosky v. Burroughs Corporation*, 826 F.2d 794 (9th Cir. 1987).[11]

3. *Federal and State Courts Have Held that ERISA Pre-empts State Tort Suits for Interference With Pension Benefits*

Accordingly, in direct contrast to the decision below, several courts have held that ERISA pre-empts a state tort suit in which an employer is alleged to have discharged a worker to avoid paying benefits. In *Sorosky, supra*, an employee claimed wrongful dis-

[11] The few cases that have held to the contrary lack merit. As Justice Gonzales aptly noted in his dissent below, "the [Texas Supreme] court's reliance upon two federal district court cases, *Hovey v. Lutheran Medical Center*, 516 F. Supp. 554 (E.D.N.Y. 1981) and *Savodnik v. Korvettes, Inc.*, 488 F. Supp. 822 (E.D.N.Y. 1980), is misplaced" because subsequent decisions of federal and state courts in New York have refused to follow them. Pet. App. 15a-16a. In *K Mart Corp. v. Ponsock*, 732 P.2d 1364 (Nev. 1987), where a jury award for compensatory and punitive damages for breach of an implied covenant of good faith and fair dealing based upon an employee's claim that he was terminated to avoid payment of pension benefits was upheld, the court did not address the issue of ERISA pre-emption.

charge on a number of theories, including an allegation that his employer discharged him in an attempt to avoid paying him monthly retirement benefits. 826 F.2d at 800. The Ninth Circuit ruled that ERISA pre-empted the wrongful discharge claim "to the extent that . . . [it] refers to the employee benefit plan." *Id.* Likewise, the Supreme Court of Appeals of West Virginia, the highest court in that State, has upheld a grant of summary judgment in favor of an employer based on ERISA pre-emption when an employee claimed that he was discharged to prevent vesting of his pension rights. *Conaway v. Eastern Associated Coal Corporation*, 358 S.E.2d 423 (W. Va. 1986). The Iowa Court of Appeals has reached the same conclusion. *Coontz v. Gordon Jewelry Corporation*, 439 N.W. 2d 223 (Iowa Ct. App. 1989) (to the extent that wrongful discharge claim included charge that employee may have been fired to prevent receipt of pension benefits, as distinguished from other wrongful discharge theories, it relates to employee benefit plan and is pre-empted by ERISA).

In addition, numerous federal district courts have reached the same conclusion and rejected state tort claims parallel to ERISA § 510. In *Harvey v. I.T.W. Inc.*, 672 F. Supp. 973 (W.D. Ky. 1987), a former employee based his claim of discharge in violation of public policy on the policy expressed in § 510, as did the Texas Supreme Court below. The court granted summary judgment on the grounds of ERISA pre-emption.

In a similar case, the U.S. District Court for the District of Maryland held that ERISA pre-empted a plaintiff's claim that her employer intentionally discharged her to prevent her retirement benefits from vesting. *Pratt v. Delta Air Lines, Inc.*, 675 F. Supp.

991 (D. Md. 1987). The court specifically rejected the plaintiff's argument, like that adopted by the court below, that the suit was not pre-empted because it involved a claim for damages other than retirement benefits. 675 F. Supp. at 998-99.[12]

4. *Similarly, Courts Have Found ERISA Pre-emption Of Other State Law Claims Within the Scope of ERISA § 510*

In harmony with the numerous decisions holding that state suits alleging discharge to interfere with

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[12] *See also Middleton v. Hewlett Packard Company*, 715 F. Supp. 988, 989 (D.Colo. 1989) (claim alleging constructive discharge to interfere with ERISA benefits pre-empted); *Treadwell v. John Hancock Mutual Life Insurance Company*, 666 F. Supp. 278, 282-283 (D. Mass. 1987) (state law wrongful termination claim comparable to that provided by § 510 pre-empted by ERISA); *Adams v. Catalyst Research, A Division of Mine Safety Appliances Co., Inc.*, 659 F. Supp. 163, 164-65 (D. Md. 1987) (claim for discharge to cause forfeiture of pension rights pre-empted); *Miner v. International Typographical Union Negotiated Pension Plan*, 601 F. Supp. 1390, 1394 (D. Colo. 1985) (state law claims redundant of ERISA claims pre-empted); *Baker v. Kaiser Aluminum and Chemical Corporation*, 608 F. Supp. 1315, 1318 (N.D.Cal. 1984) (claim of wrongful discharge to deny maximum pension benefits pre-empted); *King v. James River-Pepperell, Inc.*, 593 F. Supp. 1344, 1346 (D. Mass. 1984) (action "nearly identical" to those prohibited by ERISA pre-empted); *Delisi v. United Parcel Service, Inc.*, 580 F. Supp. 1572, 1575-76 (W.D. Pa. 1984) (claim of wrongful discharge to deprive plaintiff of disability benefits pre-empted); *Kelly v. International Business Machines Corporation*, 573 F. Supp. 366, 371 (E.D. Pa. 1983), *aff'd without opinion*, 746 F.2d 1467 (3d Cir. 1984) (state claim addressing the "same type of wrong prohibited by" § 510 pre-empted); *Gordon v. Matthew Bender & Company, Inc.*, 562 F. Supp. 1286, 1294 (N.D. Ill. 1983) (ERISA § 510 already provides a remedy for employee dicharged shortly before vesting date, thus claim pre-empted).

pension benefits are pre-empted by ERISA, several courts have held that similar suits concerning interference with other benefits are pre-empted as well. In *Fitzgerald v. Codex Corp.*, 882 F.2d 586 (1st Cir. 1989), the First Circuit concluded that a claim that an employee was discharged to avoid having to pay health benefits for his wife was pre-empted by ERISA since the claim "related to" an employee benefit plan and § 510 creates a cause of action under ERISA addressing this type of claim. *Id.* at 588.[13] The Eighth Circuit reached a similar conclusion in *Dependahl v. Falstaff Brewing Corporation*, 653 F.2d 1208 (8th Cir.) *cert. denied*, 454 U.S. 968 and 1084 (1981), holding that common law claims of tortious interference with severance pay and life insurance plans are pre-empted by ERISA. *Id.* at 1216.

B. Because the Instant Action Falls Within § 510, It Is Pre-empted by ERISA Regardless of the Remedy Sought

Respondent's claim, for wrongful discharge with the intent of interfering with the attainment of his pension benefits, falls squarely within the scope of § 510 and thus could, and should have been brought under ERISA. Under ERISA's broad pre-emption provision, Respondent's state tort claim is superseded by federal law. *Sorosky v. Burroughs Corporation*, 826 F.2d 794.

The court below attempted to distinguish the wealth of authority supporting ERISA pre-emption

[13] *See also Folz v. Marriott Corporation*, 594 F. Supp. 1007 (W.D. Mo. 1984) (state tort claim for discharge to eject plaintiff from self-funded medical benefits plans pre-empted by ERISA).

by suggesting that "here the plaintiff acknowledged in his brief to the court of appeals that he is *not* seeking lost *pension benefits* but is instead seeking future wages, mental anguish and punitive damages as a result of the wrongful discharge." Pet. App. 5a n.3 (emphasis in original). This distinction does not suffice.

There is no basis whatsoever for suggesting that the application of ERISA pre-emption is dependent upon the type of remedy sought. The statutory language pre-empts "any and all State laws" without any such restriction. § 514. "[T]he crucial inquiry is not the purpose of the action; rather, its relation to an ERISA pension plan is determinative." *Authier v. Ginsberg*, 757 F.2d 796, 800 (6th Cir.), *cert. denied*, 474 U.S. 888 (1985).

Moreover, the existence of a cause of action under ERISA conclusively establishes pre-emption, regardless of whether additional remedies would be available in an identical cause of action under state law. In *Pilot Life Insurance Company v. Dedeaux*, 481 U.S. 41 (1987), this Court considered whether ERISA pre-empted state common law tort and contract claims regarding improper processing of benefit claims. *Id.* at 43. Agreeing with the Solicitor General's argument that:

> Congress clearly expressed an intent that the civil enforcement provisions of ERISA § 502(a) be the exclusive vehicle for actions by ERISA-plan participants and beneficiaries asserting improper processing of a claim for benefits, and that varying state causes of action for claims within the scope of § 502(a) would pose an obstacle to the purposes and objectives of Congress[,]

481 U.S. at 52, the Court ruled that such claims are pre-empted by ERISA and specifically rejected the concept of separate state remedies for the same wrong, stating:

> The policy choices reflected in the inclusion of certain remedies and the exclusion of others under the federal scheme would be completely undermined if ERISA-plan participants and beneficiaries were free to obtain remedies under state law that Congress rejected in ERISA. . . The deliberate care with which ERISA's civil enforcement remedies were drafted and the balancing of policies embodied in its choice of remedies argue strongly for the conclusion that ERISA's civil enforcement remedies were intended to be exclusive.

Pilot Life, 481 U.S. at 54. Thus, as *Pilot Life* reflects, the case for pre-emption of state laws that mirror rights guaranteed by ERISA but provide remedies not available under the federal statute is even *stronger* than where the state remedies are co-extensive with ERISA.

Like claims for improper processing of benefits, claims of discriminatory discharge for the purpose of interference with pension benefits are specifically provided with a cause of action under ERISA, implemented by the civil enforcement scheme of § 502. 29 U.S.C. § 1140. Thus, under the rationale of *Pilot Life*, state laws that mirror ERISA § 510 are likewise pre-empted regardless of the nature of the remedies they provide, and the decision below directly conflicts with that rationale. *See Sorosky v. Burroughs Corporation*, 826 F.2d at 800 (wrongful discharge claim pre-empted even if § 510 provides less than remedy sought). *Cf. Perry v. P.I.E. Nationwide, Inc.*, 872 F.2d 157 (6th Cir. 1989), *cert. denied*, 58 U.S.L.W. 3528 (U.S. February 20, 1990) (state law claim for breach of fiduciary duty pre-empted because ERISA provides a specific remedy); *Lee v. E.I. DuPont de Nemours and Co.*, 12 Employee Benefits Cases (BNA) 1081 (5th Cir. 1990) (state law fraud and misrepresentation claims pre-empted even though ERISA provides no remedy for harm alleged).

The inapposite distinction articulated by the court below was specifically rejected by a federal district court in *Pratt v. Delta Air Lines*, 675 F. Supp. 991 (D. Md. 1987). There, as here, in a state law tort action for emotional distress, mental anguish and punitive damages allegedly resulting from being discharged with the intent of interfering with her retirement benefits, the plaintiff argued that ERISA pre-emption was inapplicable because the suit was for damages, not merely benefits. Relying on *Pilot Life*, the court found the state tort claim pre-empted.[14]

The court below attempted to circumvent ERISA pre-emption by characterizing the claim as one for damages rather than benefits. This stratagem clearly seeks to "avoid[] through form the substance of the pre-emption provision." *Alessi*, 451 U.S. at 525. As this Court has already rejected the concept that additional state law remedies are available for ERISA-protected rights, Respondent's claim for additional remedies, used by the court below to avoid

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[14] *But see Clark v. Coats & Clark, Inc.*, 865 F.2d 1237 (11th Cir. 1989) (while state law suit for discharge intending to interfere with attainment of pension benefits was pre-empted by ERISA, state law claim for intentional infliction of emotional distress regarding the manner in which discharge was handled was not).

ERISA pre-emption, is clearly irrelevant. *Cf. Authier v. Ginsberg*, 757 F.2d 796 (6th Cir. 1985) (suit by fiduciary for discharge in violation of public policy pre-empted as "related to" employee benefit plan although no lost benefits claimed).

II. THE DECISION BELOW, BY ALLOWING A STATE TORT SUIT ON A CLAIM GOVERNED BY ERISA, UNDERMINES THE CONSISTENT SYSTEM OF PENSION REGULATION ESTABLISHED BY CONGRESS IN ERISA AND SERIOUSLY BURDENS THE VAST NUMBER OF EMPLOYERS WHO MAINTAIN EMPLOYEE BENEFIT PLANS

A. The Decision Below Seriously Undermines the Uniform System of Pension Regulation Congress Intended To Establish with ERISA

As noted above, § 514 of ERISA was "meant to establish pension plan regulation as exclusively a federal concern." *Alessi*, 451 U.S. at 523. Explaining ERISA's broad pre-emption provision, Senator Javits stated that "the emergence of a comprehensive and pervasive Federal interest and the interests of uniformity with respect to interstate plans required—but for certain exceptions—the displacement of State action in the field of private employee benefit programs." 120 Cong. Rec. 29942 (1974) (remarks of Senator Javits). Instead of a plethora of conflicting state laws, ERISA's sponsors anticipated that with broad pre-emption of state regulation, "a body of Federal substantive law will be developed by the courts to deal with issues involving rights and obligations under private welfare and pension plans." *Id.* Accordingly, "[t]he pre-emption provision was intended to displace all state laws that fall within its sphere, even including state laws that are consistent with ERISA's substantive requirements." *Metropolitan Life Insurance Company v. Massachusetts*, 471 U.S. at 739.[15]

The decision below, by allowing a state cause of action covering the same conduct as § 510 of ERISA, seriously undermines the uniform federal regulation of benefit plans that Congress intended to establish. It allows the state of Texas, and any other state that follows suit, to superimpose its own concept of appropriate regulation on the federal scheme. For example, in addition to adding remedies beyond those which Congress provided (and which have been held to be exclusive), the Texas Supreme Court presumably would be free in future cases to develop substantive and procedural common law governing the new tort that it has created. Such state rules might differ significantly from federal common law related to § 510 on such important subjects as mode and burden of proof, applicable statute of limitations, availability of jury trials, and others. Such inconsistencies could result, *inter alia*, in different substantive standards between federal and state law for determining whether a violation of § 510 or its state law counterpart had occurred. This kind of inconsistent regulation is exactly what Congress intended to preclude. As this Court has recognized:

> The expectations that a federal common law of rights and obligations under ERISA-regulated plans would develop, indeed, the entire comparison of ERISA's § 502(a) to § 301 of the LMRA would make little sense if the remedies available to ERISA participants and beneficiaries under

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[15] *See also Mackey v. Lanier Collections Agency & Service*, 486 U.S. 825, 830 (1988) ("Legislative 'good intentions' do not save a state law within the broad pre-emptive scope of § 514(a).").

> § 502(a) could be supplemented or supplanted by varying state laws.

Pilot Life, 481 US. at 56. The decision below indeed frustrates the expectations of Congress.

B. The Decision Below, by Allowing a State Tort Action That Mirrors ERISA § 510, Seriously Burdens Employers Who Maintain Employee Benefit Plans

This Court already has recognized the serious problem that would be created by the imposition of varying state laws on employee benefit plans. Holding that ERISA pre-empted a state human rights law prohibiting practices permitted by federal law, the Court observed that:

> An employer with employees in many States might find that the most efficient way to provide benefits to those employees is through a single employee benefit plan. Obligating the employer to satisfy the varied and perhaps conflicting requirements of particular state fair employment laws, as well as the requirements of Title VII, would make administration of a uniform nationwide plan more difficult.

Shaw v. Delta Air Lines, Inc., 463 U.S. at 105 n.25. The Court recognized that employers in this position would have to administer separate plans in each State, offsetting the cost of the increased administrative burden by lowering benefit levels, or adapt the uniform plan by eliminating classes of benefits. *Id.* The Court concluded, "ERISA's comprehensive preemption of state law was meant to minimize this sort of interference with the administration of employee benefit plans." *Id.*

In enacting ERISA, Congress recognized the inherent difficulties in allowing state regulation of bene-

fit plans, and thus adopted § 514 to "eliminat[e] the threat of conflicting or inconsistent State and local regulation of employee benefit plans." 120 Cong. Rec. 29933 (1974) (remarks of Senator Williams). As the Court agreed with the Solicitor General in *Pilot Life*, "varying state causes of action for claims within the scope of § 502(a) would pose an obstacle to the purposes and objectives of Congress." 481 U.S. at 52.

These concerns are real. Of the 21.3 million full-time employees of medium-sized and large private firms in 1986, ninety percent participated in pension plans and had employer-sponsored health insurance. Employee Benefit Research Institute, Questions and Answers About Employee Benefits, EBRI Issue Brief No. 89 at 1 (April 1989). A substantial number of companies, including EEAC and TELC's members, are multistate employers, many of whom do business in all fifty states. Any erosion of ERISA's pre-emption provision will subject employee benefit plans to burdensome and costly state and local regulation, will severely hamper their efforts to maintain uniform and equitable benefits for their workforces, and will infringe on their ability to engage in free collective bargaining on benefits with unions representing their employees.

CONCLUSION

For the foregoing reasons, EEAC and TELC respectfully submit that the decision of the Supreme Court of Texas should be reversed.

Respectfully submitted,

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